

R# 559400

UNITED STATES DISTRICT COURT  
IN THE EASTERN DISTRICT OF MICHIGAN -- SOUTHERN DIVISION

JOSEPH SCHOENITH,

Plaintiff

-VS-

Case: 2:07-cv-12828  
Assigned To: Tarnow, Arthur J  
Referral Judge: Whalen, R. Steven  
Filed: 07-06-2007 At 03:54 PM  
CMP SCHOENITH V GMAC CORP (RRH)

GMAC MORTGAGE CORPORATION,

Defendant.

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Attorney for Plaintiff  
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**COMPLAINT & JURY DEMAND**

**INTRODUCTION**

1. The United States credit industry is rapidly moving towards replacing cash with a credit and debit card system which would electronically transact our financial affairs and track our every move. Smart cards, the financial information superhighway and complete absence of privacy appear to be in our future.

2. The Fair Credit Reporting Act, 15 U.S.C. § 1681 *et seq* is designed to **protect consumers** from inaccurate or arbitrary information in a consumer report and to **establish credit reporting practices** that utilize accurate, relevant, and current information in a confidential and responsible manner.
3. The Fair Credit Reporting Act ("FCRA") sets forth duties and causes of action against furnishers and users of credit information. 15 U.S.C. §§ 1681n, 1681o, 1681s-2. Creditors who subscribe to the credit reporting agencies, like other furnishers and users of credit information, have a duty under the FCRA to update and correct information."
4. The FCRA prohibits any furnisher-subscriber from furnishing information relating to a consumer to a credit reporting agency if the, "person knows or consciously avoids knowing that the information is inaccurate." 15 USC §1681s-2[1][A]. Moreover, once a subscriber has been notified that specific information is inaccurate and the information, in fact, turns out to be inaccurate, that information must be deleted and suppressed and cannot continue to be furnished. If the furnisher-subscriber determines that information it has reported is inaccurate or incomplete, the furnisher has a duty to notify, retract, and correct it's prior reportings to all agencies to whom it subscribes and to correct it's own internal records.
5. The furnisher-subscriber is prohibited from re-reporting the false information. 15 U.S.C. § 1681s-2[a][3]. Furnishers who are notified by the credit reporting agencies have a duty to conduct an investigation within a reasonable time with respect to the disputed data; review the information provided; report the results back to the agencies; and if the data is inaccurate, report the results to all agencies to whom they subscribe and correct their internal records. 15 U.S.C. § 1681i; 15 U.S.C. § 1681s-2. Any dispute must be reported forward as a

'disputed matter' until resolved and either deleted, amended or left intact.

6. The FCRA expressly provides consumers with a private cause of action; violations of 15 U.S.C. § 1681s-2 are enforceable and actionable via 15 U.S.C. § 1681n and 15 U.S.C. § 1681o, depending on whether the violation is willful or merely negligent.

#### **Parties**

1. Joseph Schoenith, resides in Grosse Pointe Woods, Michigan.
2. Joseph Schoenith is a consumer as defined by the Fair Credit Reporting Act, 15 U.S.C. §§ 1681 *et seq* ("FCRA") at §1681a(c).
3. The Defendant to this action is GMAC Mortgage Corporation ("GMAC Mortgage"), a furnisher of information as contemplated by the Fair Credit Reporting Act ("FCRA") 15 U.S.C. §1681s-2(a) & (b), that regularly and in the ordinary course of business furnishes information to one or more consumer reporting agencies about consumer transactions or experiences with any consumer.

#### **Jurisdiction**

4. This lawsuit, being brought pursuant to 15 U.S.C. 1681 *et seq*, presents a federal question and as such, jurisdiction arises under 28 U.S.C. §1331 and 15 U.S.C. §1681 *et seq*.
5. This court may also exercise supplemental jurisdiction over the related state law claims arising out of the same nucleus of operative facts which give rise to any federal law claims under 28 U.S.C. § 1367.
6. All allegations and claims in this complaint stem from false and inaccurate credit reporting relating to Mr. Schoenith.

**General Factual Allegations**

7. On August 14, 2003, Plaintiff sued the Defendant in Wayne County Circuit Court, Case No. 03-327193-CK in an effort to enforce a mortgage ("current mortgage") that the Defendant refused to honor.
8. The previous lawsuit between the parties was resolved and dismissed in Wayne County Circuit Court, Case No. 03-327193-CK.
9. Since the time of the dismissal, the parties have been abiding by the terms of the current mortgage agreement which GMAC Mortgage initially did not honor.
10. GMAC Mortgage reported and continues to report to the various credit bureaus delinquencies in payment on Account # 652835190, the previous mortgage note, which GMAC Mortgage held and which was, according to the refinance agreement, paid off by GMAC Mortgage on or about June 19, 2003.
11. As of June 19, 2003, GMAC Mortgage has been on notice that the delinquencies it reported and continues to report on the credit history of the Plaintiff regarding Account # 652835190 are due solely to its own mistakes and are not the responsibility of the Plaintiff.
12. Any delinquencies reported by GMAC Mortgage after June 19, 2003, as to Account # 652835190 are false.
13. On April 4, 2006, counsel for Plaintiff sent a reinvestigation letter to at least one credit reporting agency requesting that the credit bureau reinvestigate, *inter alia*, GMAC Mortgage's Account # 652835190 and correct it.
14. At least one credit reporting agency transmitted the reinvestigation request to GMAC Mortgage, which, instead of doing a reasonable reinvestigation, verified the false information

and failed to properly reinvestigate.

15. Since GMAC Mortgage's failure to properly reinvestigate the false information, Plaintiff has been denied credit as a result of the false information verified by GMAC

**COUNT I – Fair Credit Reporting Act (GMAC Mortgage)**

16. Mr. Schoenith incorporates the preceding allegations by reference.
17. GMAC Mortgage was required under 15 U.S.C. § 1681s-2(b), to respond to the request for reinvestigation initiated by Plaintiff's counsel by completing an inquiry into the facts underlying the trade-line and providing accurate information to the credit reporting agencies regarding that trade-line.
18. In the event that GMAC Mortgage was unable to verify the information which it had reported, GMAC Mortgage was required to advise the credit reporting agency of this fact.
19. Following the reinvestigation, GMAC Mortgage reported the erroneous credit information with actual knowledge of errors, in violation of the FCRA, 15 U.S.C. § 1681s-2(b) and the general duties implied to all conduct of furnishers under 15 U.S.C. § 1681s-2(a)(1)(A).
20. Following the reinvestigation, GMAC Mortgage reported the erroneous credit information and consciously avoided knowing that the credit information was inaccurate, in violation of the FCRA, 15 U.S.C. § 1681s-2(b) and the general duties implied to all conduct of furnishers under 15 U.S.C. § 1681s-2(a)(1)(A).
21. Following the reinvestigation and dispatch of notice directly to GMAC Mortgage at its designated address, GMAC Mortgage reported credit information that was not in fact accurate, in violation of the FCRA, 15 U.S.C. § 1681s-2(b) the general duties implied to all conduct of furnishers under 15 U.S.C. § 1681s-2(a)(1)(B).

22. Following the reinvestigation and dispatch of direct notice to GMAC Mortgage, GMAC Mortgage failed to notify the consumer reporting agencies to whom it reported credit information that the debt was disputed, in violation of the FCRA, 15 U.S.C. § 1681s-2(b) the general duties implied to all conduct of furnishers under 15 U.S.C. § 1681s-2(a)(3).
23. GMAC Mortgage failed to notify the consumer reporting agencies to whom it reported credit information of Mr. Schoenith's closure of the GMAC Mortgage's account within the same billing period in which the account was closed, in violation of the FCRA, 15 U.S.C. § 1681s-2(b) the general duties implied to all conduct of furnishers under 15 U.S.C. § 1681s-2(a)(4).
24. GMAC Mortgage failed to notify the consumer reporting agencies to whom it reported credit information of the date of any delinquency, charge off, or collection placement within 90 days of the action, in violation of the FCRA, 15 U.S.C. § 1681s-2(b) the general duties implied to all conduct of furnishers under 15 U.S.C. § 1681s-2(a)(5).
25. GMAC Mortgage negligently failed to put in place procedures to complete an adequate reinvestigation of disputed credit information in violation of 15 U.S.C. §§ 1681s-2(b) and 1681o; alternatively GMAC Mortgage willfully refused to properly to put in place adequate procedures to reinvestigate the inaccuracies in Mr. Schoenith's credit report in violation of 15 U.S.C. §§ 1681s-2(b) and 1681n.
26. GMAC Mortgage negligently failed to conduct a proper reinvestigation of Mr. Schoenith's credit reporting dispute in violation of 15 U.S.C. §§ 1681s-2(b) and 1681o; alternatively GMAC Mortgage willfully refused to properly reinvestigate the inaccuracies in Mr. Schoenith's credit report in violation of 15 U.S.C. §§ 1681s-2(b) and 1681n.
27. Mr. Schoenith has suffered damages as a result of this violation of the FCRA.

**COUNT II (GMAC Mortgage) – Intentional Infliction of Emotional Distress**

28. Mr. Schoenith incorporates the preceding allegations by reference.
29. GMAC Mortgage's conduct in appropriating the good name and credit of Mr. Schoenith constituted extreme and outrageous conduct.
30. GMAC Mortgage intentionally appropriated the good name and credit of Mr. Schoenith , and did so with reckless disregard of the possible consequences to Mr. Schoenith .
31. GMAC Mortgage's conduct appropriating the good name and credit of Mr. Schoenith directly and proximately caused emotional distress to Mr. Schoenith .

**COUNT III – Negligence (GMAC Mortgage)**

32. Mr. Schoenith incorporates the preceding allegations by reference.
33. GMAC Mortgage owed Mr. Schoenith a duty to refrain from unreasonable conduct which could foreseeably cause damage to Mr. Schoenith's person or property.
34. Mr. Schoenith holds a property interest in his good name, credit worthiness, and reputation.
35. GMAC Mortgage's publication of false and inaccurate credit information on Mr. Schoenith's credit report was unreasonable.
36. Mr. Schoenith has suffered foreseeable damages as a result of this unreasonable publication of false and inaccurate credit information by GMAC Mortgage.

**COUNT IV– Negligence *Per Se* (GMAC Mortgage)**

37. Mr. Schoenith incorporates the preceding allegations by reference.
38. GMAC Mortgage's actions in publishing false and inaccurate credit information on Mr. Schoenith's credit report was in violation of express duties under the FCRA.
39. Those unreasonable actions were *per se* unreasonable.

40. Mr. Schoenith has suffered damages as a result of this *per se* unreasonable publication of false and inaccurate credit information by GMAC Mortgage.

**COUNT V – Consumer Protection Act (GMAC Mortgage)**

41. Mr. Schoenith incorporates the preceding allegations by reference.
42. The facts set forth in this complaint establish that GMAC Mortgage has violated the following provisions of the Michigan Consumer Protection Act, M.C.L. § 445.903(1):
- A. (a) Causing a probability of confusion or misunderstanding as to the source, sponsorship, approval, or certification of goods or services.
  - B. (c) Representing that goods or services have sponsorship, approval, characteristics, ingredients, uses, benefits, or quantities that they do not have or that a person has sponsorship, approval, status, affiliation, or connection that he or she does not have.
  - C. (n) Causing a probability of confusion or of misunderstanding as to the legal rights, obligations, or remedies of a party to a transaction.
  - D. (o) Causing a probability of confusion or of misunderstanding as to the terms or conditions of credit if credit is extended in a transaction.
  - E. (u) Failing, in a consumer transaction that is rescinded, canceled, or otherwise terminated in accordance with the terms of an agreement, advertisement, representation, or provision of law, to promptly restore to the person or persons entitled to it a deposit, down payment, or other payment, or in the case of property traded in but not available, the greater of the agreed value or the fair market value of the property, or to cancel within a specified time or an otherwise reasonable time an acquired security interest.

- F. (w) Representing that a consumer will receive a rebate, discount, or other benefit as an inducement for entering into a transaction, if the benefit is contingent on an event to occur subsequent to the consummation of the transaction.
  - G. (x) Taking advantage of the consumer's inability reasonably to protect his or her interests by reason of disability, illiteracy, or inability to understand the language of an agreement presented by the other party to the transaction who knows or reasonably should know of the consumer's inability.
  - H. (y) Gross discrepancies between the oral representations of the seller and the written agreement covering the same transaction or failure of the other party to the transaction to provide the promised benefits.
43. Mr. Schoenith has suffered damages as a result of these violations of the Michigan Consumer Protection Act by GMAC Mortgage.

**COUNT VI – Defamation by Libel (GMAC Mortgage)**

44. Mr. Schoenith incorporates the preceding allegations by reference.
45. GMAC Mortgage's written publications of the trade lines on Mr. Schoenith's credit report were false and defamatory.
46. GMAC Mortgage's publications were not privileged communications.
47. GMAC Mortgage's publications of the trade lines on Mr. Schoenith's credit report were made negligently, with reckless disregard to their falsity, or maliciously.
48. The statements were *per se* defamatory.
49. Mr. Schoenith's has suffered special damages including loss of creditworthiness as a result of the publication of the defamatory statements.

50. Mr. Schoenith's has suffered emotional distress as a result of the publication of the defamatory statements.

**COUNT VII – Special Request for Declaratory and Injunctive Relief under Michigan Common Law (GMAC Mortgage)**

51. Mr. Schoenith incorporates the preceding allegations by reference.
52. Mr. Schoenith requests that this Court issue an order enjoining the Defendant from continuing to harm Mr. Schoenith by reporting derogatory information as to Account # 652835190.

**Jury Demand**

53. Mr. Schoenith demands trial by jury.

**Request For Relief**

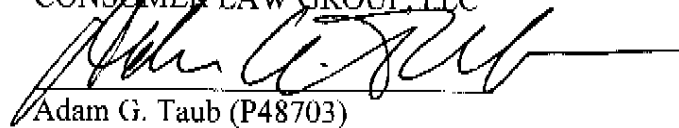
*ACCORDINGLY Mr. Schoenith requests that the Court Grant any or all of the following relief:*

- A. Actual damages in an amount to be determined at trial.*
- B. Statutory damages in an amount to be determined at trial.*
- C. Punitive damages in an amount to be determined at trial.*
- D. Costs and attorney fees provided by statute.*
- E. Declaratory and injunctive relief as appropriate.*
- F. Any other relief the Court deems just.*

Respectfully Submitted,

LYNGKLEP & TAUB  
CONSUMER LAW GROUP, PLC

By:

A handwritten signature in black ink, appearing to read 'Adam G. Taub', is written over a horizontal line.

Adam G. Taub (P48703)

Attorney for Joseph Schoenith  
24500 Northwestern Highway, Ste. 206  
Southfield, MI 48075  
(248) 746-3790  
Adamlaw@Pop.Net

Dated: July 6, 2007

JS 44 11/99

**CIVIL COVER SHEET** COUNTY IN WHICH THIS ACTION AROSE: WAYNE**ORIGINAL**

The JS-44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for use of the Clerk of Court for the purpose of initiating the civil docket sheet.

**I. (a) PLAINTIFFS**

JOSEPH SCHOENITH

**DEFENDANTS**

GMAC MORTGAGE CORPORATION

(b) County of Residence of First Listed

WAYNE

County of Residence of First Listed

WAYNE

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.

Attorneys (If Known)

(c) Attorney's (Firm Name, Address, and Telephone Number)

Adam G. Taub, Lyngklip & Taub Consumer Law Group  
24500 Northwestern #206, Southfield, MI 48075  
(248) 746-3790

**II. BASIS OF JURISDICTION** (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
- ☒ 3 Federal Question (U.S. Government Not a Party)
- ☐ 2 U.S. Government Defendant
- ☐ 4 Diversity (Indicate Citizenship of Parties in Item 11)

**III. CITIZENSHIP OF PRINCIPAL PARTIES** (Place an "X" in One Box for Plaintiff)

(For Diversity)

Citizen of T

Case: 2:07-cv-12828

Citizen of A

Assigned To: Tarnow, Arthur J

Referral Judge: Whalen, R. Steven

Filed: 07-06-2007 At 03:54 PM

Citizen or S

Foreign Country

CMP SCHOENITH V GMAC CORP (RRH)

**IV. NATURE OF SUIT** (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment and Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability	<b>PERSONAL INJURY</b> <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault Libel And Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <b>PERSONAL INJURY</b> <input type="checkbox"/> 362 Personal Injury-Med. Malpractice <input type="checkbox"/> 365 Personal Injury-Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability <b>PERSONAL PROPERTY</b> <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21:881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other <b>LABOR</b> <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 <b>PROPERTY RIGHTS</b> <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark <b>SOCIAL SECURITY</b> <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) <b>FEDERAL TAX SUITS</b> <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS-Third Party 26 USC 7609	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce/ICC <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced & Corrupt Organizations <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 890 Other Statutory Actions
<b>REAL PROPERTY</b> <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<b>CIVIL RIGHTS</b> <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 440 Other Civil Rights	<b>PRISONER PETITIONS</b> <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> Habeas Corpus: <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition		

**V. ORIGIN** (PLACE AN "X" IN ONE BOX ONLY)

- ☒ 1 Original Proceeding
- ☐ 2 Removed from State Court
- ☐ 3 Remanded from Appellate Court
- ☐ 4 Reinstated or Reopened
- ☐ 5 (specify) Transferred from another district
- ☐ 6 Multi district Litigation
- ☐ 7 Judge from District Appeal to District Magistrate

**VI. CAUSE OF ACTION** (Cite the U.S. Civil Statute under which you are filing and write brief statement of cause. Do not cite jurisdictional statutes unless diversity.)

This lawsuit is filed pursuant to the FAIR CREDIT REPORTING ACT and other state law claims arising out of the same transaction

**VII. REQUESTED IN COMPLAINT:**

☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

\$ DEMAND

CHECK YES only if demanded in Complaint:

JURY DEMAND: ☒ Yes ☐ No**VIII. RELATED CASE(S) instructions): IF ANY**JUDGE Isidore B Torres

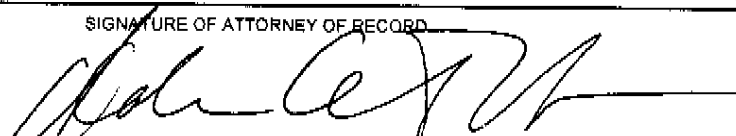
DOCKET NUMBER

Wayne Co 03-327193

DATE

SIGNATURE OF ATTORNEY OF RECORD

7-6-07



**JAN 10 10**  
PURSUANT TO LOCAL RULE 83.11

1. Is this a case that has been previously dismissed?

☐ Yes

☒ No

If yes, give the following information:

Court: \_\_\_\_\_

Case No.: \_\_\_\_\_

Judge: \_\_\_\_\_

2. Other than stated above, are there any pending or previously discontinued or dismissed companion cases in this or any other court, including state court? (Companion cases are matters in which it appears substantially similar evidence will be offered or the same or related parties are present and the cases arise out of the same transaction or occurrence.)

☐ Yes

☒ No

If yes, give the following information:

Court: \_\_\_\_\_

Case No.: 03- \_\_\_\_\_

Judge: \_\_\_\_\_

Notes :  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_